

# THE POWER OF THE PEN: INFORMAL PROPERTY RIGHTS DOCUMENTS IN ZAMBIA

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Forthcoming at *African Affairs*

## ABSTRACT

This article explores the expansion of informal property rights documents through the case of chiefs' titles in Zambia. Entrepreneurial chiefs have created written land rights for citizens on customary land in the form of letters, signed maps, and certificates. These documents are an alternative to state land titling that allows chiefs to maintain their control over land. However, chiefs' titles are extra-legal: they are enforced by the same traditional leaders who govern unwritten customary rights, raising doubt about whether written land rights can strengthen citizens' land claims without changing the existing power structures. Evidence from 121 interviews with chiefs, bureaucrats, and smallholder farmers and a survey of over 5500 citizens shows that, despite their flaws, chiefs' titles do increase citizens' perceptions of tenure security. This suggests that informal property rights documents can be a powerful tool in a citizens' arsenal. Further, these findings illustrate a process of adaptation and change within customary land institutions.

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Citizens rely on innovative strategies to overcome challenges created by ineffective state policies and the aftereffects of colonial administrations. They build community-based networks to circulate credit access and tap into social systems of contract enforcement to facilitate business development.<sup>1</sup> In the domain of land rights, citizens in African countries have responded to the inadequacies of regimes of customary tenure and statutory land titling with innovations designed to increase their tenure security, such as hand-written notes and maps.<sup>2</sup> These informal land documents are written evidence of rights that would otherwise be communicated orally or understood as customary norms. They make an individual's land rights legible, yet these bottom-up innovations are outside of the state's enforcement mechanisms. As a result, the same socio-political relations that govern unwritten property rights determine whether the rights enshrined in such documents are respected. This establishes a paradox of informal property rights documents: can written land rights increase tenure security if they are created and enforced by the same local authorities that govern unwritten land rights?

The proliferation of certificates, letters, and maps distributed by traditional leaders (TLs) to acknowledge citizens' land claims on customary land in Zambia is one such innovation in informal property rights documents. These "chiefs' titles" are the creations of entrepreneurial chiefs, village heads, and traditional councils. Consequently, their formats vary widely across Zambia's 288 official chiefdoms. Citizens draw upon these documents to show that a TL has recognized their land claims and to identify the boundaries of their land. However, these papers are extra-legal. As a result, chiefs can revoke or ignore them as they could an unwritten property right in their domain, creating doubt as to whether possessing a chief's title would, in fact, shift citizens' confidence that they can continuously use their land without fear of expropriation. Such perceptions of tenure security shape individuals' incentives and investment behaviours. Whether informal land documents impact the 'subjective dimension' of tenure security thus has important consequences for economic decision-making, as well as community membership.<sup>3</sup>

The Zambia case is a hard test for examining the security-enhancing effects of informal written property rights for two reasons. First, Zambia's chiefs have highly concentrated official authority over customary land. It is uncommon for the state to challenge an official chief's land governance decisions within his or her domain, in part because chiefs have strong political

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<sup>1</sup> Anna Lindley, 'Between 'dirty money' and 'development capital': Somali money transfer infrastructure under global scrutiny', *African Affairs* 108, 433 (2009), pp. 519–39; Aili Mari Tripp, *Changing the rules: The politics of liberalization and the urban informal economy in Tanzania* (University of California Press, Berkeley, CA, 1997).

<sup>2</sup> Philippe Lavigne Delville, 'When farmers use 'pieces of paper' to record their land transactions in francophone rural Africa', *The European Journal of Development Research* 14, 2 (2002), pp. 89–108; Mariatou Koné and Jean-Pierre Chauveau, 'Décentralisation de la gestion foncière et 'petits reçus': Pluralisme des règles, pratiques locales et régulation politique dans le Centre-Ouest-Ivoirien', *Bulletin de l'APAD*, 16 (1998); Osman Alhassan, 'Customary land tenure and land documentation in the Wasa Amenfi District, Western Ghana', *Ghana Journal of Geography* 1 (2009), pp. 95–114; Catherine André, 'Custom, contracts and cadastres in north-west Rwanda', in Tor Arve Benjaminsen and Christian Lund (eds), *Securing land rights in Africa* (Frank Cass, Portland, OR, 2003), pp. 153–72.

<sup>3</sup> Jean-Pierre Sawadogo and Volker Stamm, 'Local perceptions of indigenous land tenure systems: Views of peasants, women and dignitaries in a rural province of Burkina Faso.' *The Journal of Modern African Studies* 38, 2 (2000), pp. 280. On conceptualizing the different dimensions of tenure security, see Marie Christine Dushimiyimana Simbizi, Rohan Mark Bennett, and Jaap Zevenbergen, 'Land tenure security: Revisiting and refining the concept for Sub-Saharan Africa's rural poor.' *Land Use Policy* 36 (2014), pp. 231–238.

influence.<sup>4</sup> As Augustine Mulolwa described, there is ‘no legal instrument that limits the chiefs’ discretionary powers in the administration of land.’<sup>5</sup> Second, in recent years, Zambia’s chiefs have faced widespread criticism of their respect for smallholder land rights. Starting in 2007, a spike in food and commodity prices combined with global interest in biofuels and carbon sequestration triggered a rapid increase in large-scale land deals in Zambia. This moment of ‘global land grab’ was accompanied by a domestic land fever, in which urban middle classes and politicians alike negotiated with chiefs to stake claims to large plots of customary land.<sup>6</sup> There is reason to question whether informal documents allocated by chiefs would impact citizens’ confidence in their land rights in this context.

This article shows that, despite challenges related to the enforcement of these unstandardized documents, chiefs’ titles do increase citizens’ perceptions of tenure security. It draws upon 121 interviews with chiefs, bureaucrats, and smallholder farmers and a survey of over 5500 citizens to provide new insight into the phenomenon of chiefs’ titles in Zambia. The article proceeds by examining the proliferation of these documents, including why TLs created them and which citizens have adopted them. It then presents evidence that possessing a chief’s title reduces respondents’ fears of land expropriation. This is the case even among groups of community members who might be expected to have stronger customary rights, such as those with inherited land or kinship with the chief. These findings suggest that informal property rights documents can strengthen citizens’ land rights, even without changing the existing power structures. More broadly, they provide an example of how local actors have actively maintained customary land tenure regimes, challenging the orthodoxy of land tenure formalization.<sup>7</sup> They reveal a process of adaptation and change within customary institutions, as chiefs create and citizens adopt an alternative to the state’s land titles.

### *Informal property rights documents in Africa*

Innovation by citizens in response to tenure insecurity is at the core of classic models of property rights. Scholars have long argued that increased population densities, land values, and competition over land should provoke institutional changes.<sup>8</sup> Such bottom-up changes in forms of property rights occur because individuals respond creatively and strategically to their environments. Adopting written recognitions of land rights that would otherwise be orally-communicated is one such institutional innovation. In the African context, researchers have described a variety of informal documents that represent land usage and ownership rights, in Côte d’Ivoire,<sup>9</sup> Burkina

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<sup>4</sup> See Kate Baldwin, *The paradox of traditional chiefs in democratic Africa* (Cambridge University Press, New York, 2016).

<sup>5</sup> Augustine Mulolwa, ‘Land Governance Assessment: Zambia Country Report’ (University of Zambia, World Bank working paper 2016), p. 29.

<sup>6</sup> Horman Chitonge, ‘Customary land in Zambia: The new scramble and the evolving socio-political relations’, in Sam Moyo, Praveen Jha, and Paris Yeros (eds), *Reclaiming Africa* (Springer, Singapore, 2019), pp. 203–23.

<sup>7</sup> Ambreena S. Manji, *The politics of land reform in Africa: From communal tenure to free markets* (Zed Books, London, 2006).

<sup>8</sup> Ester Boserup, *The condition of agricultural growth* (George Allen & Unwin LTD, London, 1965); Jean-Philippe Platteau, ‘The evolutionary theory of land rights as applied to sub-Saharan Africa: A critical assessment’, *Development and Change* 27, 1 (1996), pp. 29–86.

<sup>9</sup> Koné and Chauveau, ‘Décentralisation’; Jean-Philippe Colin, ‘Securing rural land transactions in Africa. An Ivorian perspective’, *Land Use Policy* 31 (2013), pp. 430–40.

Faso,<sup>10</sup> Madagascar,<sup>11</sup> Ghana,<sup>12</sup> and Rwanda.<sup>13</sup> Unlike state-sponsored programs to formalize customary property rights, such as those in Botswana and Ethiopia, informal property rights documents are created outside of the state's official processes and rules.

The scholarship on informal property rights documents in Africa demonstrates how individuals create land papers in response to perceived insecurities. Existing studies suggest that citizens adopt informal land papers because they increase transparency in land claims<sup>14</sup> and are 'practices of validation' that make property rights visible.<sup>15</sup> These papers often acknowledge the transfer of rights through sale, leases, and sharecropping agreements. Farmers may hope that possessing informal land papers can prevent future conflicts over such rights<sup>16</sup> and constrain actors from reneging on oral contracts.<sup>17</sup> Further, the existing case studies highlight how individuals who do not have strong property rights within the customary system have used informal documents to reinforce their land claims. Migrants, non-indigenous farmers, and individuals who access land through new, non-inherited rights have adopted informal papers in Côte d'Ivoire, Burkina Faso, Rwanda, and Ghana.

In Côte d'Ivoire, for example, land papers have proliferated in zones with longstanding patterns of in-migration for cocoa and coffee production. Mariatou Koné and Jean-Pierre Chauveau emphasize how non-indigenous farmers (*allochtones*) perceive such documents as a way to mitigate tenure threats; as one Malian farmer described, without a land paper, 'the *autochtone* can chase you from your land when he wants.'<sup>18</sup> Osman Alhassan reveals a similar dynamic in Western Ghana: settler farmers have higher demand for land documents than indigenous farmers, because the indigenous feel more secure in the customary system.<sup>19</sup> In Rwanda, Catherine Andre describes how informal contracts to recognize land purchases were first developed by those who had weak rights under the customary *ubukonde* land tenure system. Further, she emphasizes that these informal innovations have the potential to strengthen women's tenure security within patrilineal inheritance structures by documenting their land rights.

Yet, the existing case studies also highlight the challenges of enforcement that shape whether informal property rights documents can increase tenure security. The ambiguity of the rights enshrined in land documents, the unstandardized process that created them, and power dynamics within the community may all impact their utility. In some circumstances, unclear language within land papers is by design, to protect the original landowners from permanent cession of their rights. Ambiguous language creates opportunities for the recipient's land rights to be renegotiated if the land is unused or if the original owner wants to sell it or give it to a family

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<sup>10</sup> Paul Mathieu, Mahamadou Zongo, and Lacinan Paré, 'Monetary land transactions in western Burkina Faso: commoditisation, papers and ambiguities', in Tor Arve Benjaminsen and Christian Lund (eds), *Securing land rights in Africa* (Frank Cass, Portland, OR, 2003), pp. 109–28.

<sup>11</sup> Sigrid Aubert et al. 'Pluralisme juridique et sécurisation foncière dans une commune cadastrée: Le cas de Miadanandriana' (CIRAD working paper ffcirad-00843816f, 2009).

<sup>12</sup> Alhassan, 'Customary land tenure'.

<sup>13</sup> Andre, 'Custom, contracts and cadastres'.

<sup>14</sup> Alhassan, 'Customary land tenure', p.109.

<sup>15</sup> Mathieu et al., 'Monetary land transactions', p.109.

<sup>16</sup> Koné and Chauveau, 'Décentralisation'.

<sup>17</sup> Alhassan, 'Customary land tenure'.

<sup>18</sup> Koné and Chauveau, 'Décentralisation', p. 6.

<sup>19</sup> Alhassan, 'Customary land tenure'.

member. For example, the terms used in land papers studied in Burkina Faso avoid any direct reference to the allocation or sale of land, the goal being to only ‘leave a trace of the agreement’.<sup>20</sup> In Côte d’Ivoire, ‘little receipts’ remain unclear about whether they represent a transfer of the right to use the land or the land itself.<sup>21</sup> As a result, Philippe Lavigne Delville suggests that informal land papers offer a recognition of the ‘existence’ of one’s land rights, even if the ‘substance’ of these rights remains ambiguous.<sup>22</sup>

The ambiguity of rights may also result from the non-standardized process of producing the papers. For example, farmers in Ghana creating informal property rights documents solicit help from students and other community members who may not be familiar with describing land claims. As Alhassan explains, ‘Many of these documents contain statements that are quite difficult to understand, especially at the local level, because the documents are done by all kinds of people who are considered literate’.<sup>23</sup> He finds that land users report differences in what was agreed upon orally and what was written in the document, concluding that the lack of standard language can make them challenging to enforce. However, Andre’s longitudinal research in Rwanda revealed that these documents became more specific over time, suggesting that users learn from past experiences to demand explicit terms of their land arrangements.

The risk that these informal documents will not be respected or recognized is a pervasive theme in the existing studies. In Côte d’Ivoire, community members acknowledged that landowners could renegotiate an agreement even if they have signed the paper.<sup>24</sup> Original owners may challenge the terms of the agreement when one of the participants in the contract dies or if the recipient does not satisfy expectations of compliance with unwritten social obligations. Further, some farmers in Ghana complained that the documents are used to ‘cheat illiterate landlords who would not have understood the whole import of the written agreement’.<sup>25</sup> Such narratives circulating within a community can weaken the rights described in informal land papers. If the legitimacy of the informal property rights documents is questioned by more powerful actors in the socio-political context, written rights are less likely to improve tenure security and could be a source of new tenurial threats. As a result, one method citizens have employed to mitigate the risk that the rights enshrined in informal documents will be ignored in the future is incorporating multiple witnesses. In the existing studies, these have included local state agents, such as the police in Burkina Faso who may stamp papers to certify ‘that the signatures are genuine,’<sup>26</sup> as well as village chiefs, traditional leaders, school teachers, and community members.

These studies indicate that citizens in at least five African countries have implemented a strategy of acquiring informal property rights documents in order to strengthen their rights. Yet – the challenge of conserving said rights remains. This highlights the need for further study of the relationships between written recognitions of otherwise oral land tenure arrangements and citizens’ confidence in their land rights. Zambia’s chiefs’ titles are an important case of this broader trend in informal property rights documents because they are an initiative of powerful

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<sup>20</sup> Mathieu et al., ‘Monetary land transactions’, p. 119.

<sup>21</sup> Koné and Chauveau, ‘Décentralisation’, p.16.

<sup>22</sup> Lavigne Delville, ‘Pieces of paper’, p. 103.

<sup>23</sup> Alhassan, ‘Customary land tenure’, p. 114.

<sup>24</sup> Koné and Chauveau, ‘Décentralisation’, p.6.

<sup>25</sup> Alhassan, ‘Customary land tenure’, p. 107.

<sup>26</sup> Mathieu et al., ‘Monetary land transactions’, p. 120.

chiefs, whose state-recognized authority to enforce property rights on customary land is unchanged by the adoption of these land papers. Some chiefs in Zambia suitably govern unwritten customary rights for smallholder farmers in their communities. Others do not, rendering customary landowners insecure. A chief's title recognizes a land claim within the same land governance structure as an unwritten customary right. Consequently, the central question that guides the following sections is whether the legibility of rights, without broader changes in the socio-political context in which land tenure relations are embedded, impacts citizens' perceptions of tenure security. The analysis concludes with attention to potential mechanisms, to guide further study of how and for whom chiefs' titling affects tenure security.

### *Research approach*

This research combines qualitative and quantitative evidence to explore the role of chiefs' titles in Zambia. The qualitative data rely heavily on a set of 60 semi-structured interviews in 15 chiefdoms in Northern, Central, and Southern Provinces from 2013 and 2014. Within each chiefdom, I interviewed the chief, two headpersons or traditional councillors (*indunas*), and a mixed-gender focus group of smallholder farmers. The questionnaire that guided these interviews focused on demand for customary land, land titling, and accountability within the institution. When permitted, I viewed and photographed chiefs' titles. An additional 42 interviews with government bureaucrats in offices related to land and 19 interviews with chiefs outside of the initial sample, civil society actors, and investors inform the analyses that follow.

Analyses of survey data complement the insights gleaned from qualitative interviews. The 2019 Local Governance and Performance Index (LGPI) survey sheds light on patterns in land rights, tenure security, and factors that impact both, such as socio-economic status.<sup>27</sup> The survey included a 'border sample' of communities within 100 km of the Malawi and Tanzania borders and a greater 'Lusaka sample' of communities within 50 km of the capital city. My main sample is the 5580 respondents who reported that they own land in the community where they reside. The key sub-sample is respondents in customary land zones, which I measure as respondents geolocated within an official chiefdom where respondents also reported a TL in the community (N=3579).<sup>28</sup> An alternative specification in the appendix ignores the historical chiefdom boundaries and measures customary land zones as localities where respondents reported TLs in the community (N=5257), which accommodates informal customary land authority as well as gaps between mapped boundaries and lived experience.

### *Chiefs' titles in Zambia*

Citizens have two official options for securing their land rights in Zambia's dual land tenure system. They may adopt a state title in the form of a lease or permit. Or they may have customary property rights under the custodianship of an official chief. The two categories of land and property

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<sup>27</sup> Ellen Lust et al., 'The local governance and performance index (LGPI) 2019: Kenya, Malawi, Zambia' (The Program on Governance and Local Development, 2020.) <[www.gld.gu.se](http://www.gld.gu.se)>

<sup>28</sup> Prevailing law defines "customary areas" as colonial reserve and trust land, which was divided into chiefdoms. The chiefdom maps created in 1958 remain the official boundaries. However, I further restrict the customary land zones specification to localities where respondents reported TLs to account for the ongoing conversions of land out of customary control through the expansion of township boundaries, agricultural settlements, resettlement schemes, and titling.

rights authority are dynamic—but the change is unidirectional. Each new title on customary land converts that land to the state’s authority. Whereas customary land tenure accounted for 94 percent of Zambia’s territory at independence, estimates were closer to 60 percent by 2012.<sup>29</sup> As the state’s control over property rights grows through titling, traditional leaders’ authority over land and its residents erodes. In 1995, the government passed a Land Act that streamlined and accelerated the process of converting customary land to titles, while also empowering chiefs by requiring their consent for any new titles in their domains. In this context, state titling has political implications for the power of TLs and the state, in addition to economic implications for citizens navigating among the two official options to secure their land claims.

Chiefs’ titles are a diverse set of documents that acknowledge individual property rights on customary land. This article uses this terminology to represent a set of documents that have been described in Zambia as chiefs’ ‘titles’, ‘forms’, ‘letters’, ‘papers’, and ‘certificates.’ These documents differ in their designs, languages, signatories, and descriptions of rights recognized. Formats include hand-written or typed letters and printed certificates. Some are professional or hand-drawn maps that have been stamped or signed by a traditional leader. Many are photocopied forms with relevant details filled in by hand. In some cases, these documents are written in an indigenous language, such as Bemba or Lozi, while others are in English. Among the examples I collected, the signatories included chiefs and village heads, as well as members of their traditional councils. This set of documents are far from uniform because TLs create, adopt, and adapt them at their own initiative. However, they share in common their informality: they are developed and enforced outside of official state processes.

Two chiefs’ titles from different Bemba chieftaincies provide examples of the formats and language describing property rights in these documents. The first is written on letterhead consisting of the title of the chief above his personal name. This represents the institutionalized authority of the chieftaincy and identifies the leader who issued it. The letter describes the individual recipient by name and National Registration Card number, certifying that he ‘is the owner of the plot and was witnessed by all committee members and the head’, while also noting a caveat on these ownership rights: ‘three years without building land [returns] back to village’. Thus, the applicant ‘owns’ the land, but it can be expropriated by the chief if unused. The second example is a document labelled as a ‘Plot Allocation Certificate’. This document refers to the rights enshrined in it as a certification that the individual ‘is a bona-fide resident of this village’ and indicates his land size. It is signed by the headman and the chairman of the village committee. Unlike other examples, it includes no explicit provision that the land can be re-allocated if unused, nor does it describe the substance of the applicant’s land rights.

Survey evidence indicates that such chiefs’ titles are present throughout the country. Paul Samboko’s analysis of the nationally-representative 2015 Indaba Agricultural Policy Research Institute survey reveals that citizens reported land documents issued by chiefs on over 600,000 ha of land. They were more common in Central and Copperbelt Provinces and less common in Northwestern and Southern.<sup>30</sup> While chiefs’ titles are not limited to specific regions, it remains at the discretion of TLs whether they exist in their chiefdoms. Among the 44 chiefdoms in the 2019

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<sup>29</sup> Lauren Honig. *Land Politics: How Customary Institutions Shape State Building in Zambia and Senegal* (Cambridge University Press, New York, forthcoming).

<sup>30</sup> Paul C. Samboko. ‘Land Institutions in Zambia, Evolution and the Determinants of the Extent of Land Titling’, (IAPRI Working paper 122, August 2017).

LGPI survey sample, the proportion of respondents with chiefs' titles in a chiefdom ranged from 0 to 32 percent, and averaged 6.1 percent. In seven of the 44 chiefdoms, zero respondents reported possessing chiefs' titles.

The concept of chiefs' titles has long been circulating among traditional leaders, who share information both within their customary institutions and among national networks of chiefs.<sup>31</sup> They existed prior to the 1995 Land Act that accelerated the expansion of state land titling. The earliest chief's title in my fieldwork sample was dated in 1994. Further, researchers have noted that Lozi chiefs were issuing 'title deeds' in 1993.<sup>32</sup> Shuichi Oyama also mentions the presence of Bemba chiefs' 'Land Allocation Forms' following 2008 fieldwork.<sup>33</sup> This idea has also been shared (and adopted) by civil society actors, such as the Zambia Land Alliance (ZLA). In 2010, they offered a standardized format to chiefs in the Petauke District of Eastern Province,<sup>34</sup> known as 'Traditional Landholding Certificates'. Some chiefs opted to participate in this initiative, while others declined.<sup>35</sup> Researchers studying this district found that, even with the ZLA's support, respondents reported that land with certificates belonged to the chief.<sup>36</sup> The prevalence of these chiefs' titles throughout the country and the role of the ZLA in increasing their visibility suggest that, even as some TLs referred to these documents as their 'inventions', Zambia's chiefs' titles are also a consequence of the diffusion of information and ideas among traditional leaders.

When asked about the origins of chiefs' titles in interviews, TLs described creating them in an effort to increase tenure security. They reported producing titles to prevent 'quarrels' over land in their areas.<sup>37</sup> This includes a desire to mitigate threats of displacement and land expropriation from within the community and from outside actors seeking customary land. For example, one headwoman explained creating chief's titles as:

This thought came because people need demarcations for them to know their area. Even if one died, the children or wife would know that this area was given to our parents. It is ours.<sup>38</sup>

Similarly, a chief explained that he writes letters confirming the boundaries of his 'subjects'' land and certifies maps because it allows them to assert that they have the authority to use the land. He described this as a response to the weakness of the current dual land tenure system and the failure of the Land Act to offer secure usage rights.<sup>39</sup> Another chief reported creating chiefs' titles because

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<sup>31</sup> This includes meetings of the House of Chiefs, traditional ceremonies, and donor-funded NGO conferences.

<sup>32</sup> Michael J. Roth and Steven G. Smith, 'Land tenure, land markets, and institutional transformation in Zambia', (LTC Research Paper 124, Land Tenure Center, University of Wisconsin-Madison, 1995), p. 19. These are described further in Niraj Jain et al., 'Perceptions of customary land tenure security in Western Province of Zambia', *International Journal of Social Science Studies* 4, 2 (2016).

<sup>33</sup> Shuichi Oyama, 'Guardian or misfeasor? Chiefs' roles in land administration under the 1995 Land Act in Zambia', in Sam Moyo and Yoichi Mine (eds), *What colonialism ignored: 'African potentials' for resolving conflicts in southern Africa* (Langaa RPCIG, Bemenda, 2016), pp. 103-128.

<sup>34</sup> Note that Petauke was not part of the LGPI survey sample or the qualitative sample.

<sup>35</sup> Erik Green and Milja Norberg, 'Traditional landholding certificates in Zambia: Preventing or reinforcing commodification and inequality?', *Journal of Southern African Studies* 44, 4 (2018), pp. 613-28.

<sup>36</sup> Cynthia Caron, 'Pursuing gender-transformative change in customary tenure systems: Civil society work in Zambia', *Development in Practice* 28, 7 (2018), pp. 872-83.

<sup>37</sup> Interviews, chiefs, Northern Province, 29 January 2014 and Northern Province, 17 January 2014.

<sup>38</sup> Interview, headwoman Northern Province, 22 January 2014.

<sup>39</sup> Interview, chief, Northern Province, 17 January 2014.



his subjects can be ‘chased from places because they have nothing to show for it’.<sup>40</sup> Chiefs repeated the claim that they invented titles because written customary property rights can reduce insecurity created by high demand for land.

Yet chiefs’ titles are also an entrepreneurial response to a political goal of preventing state titling from replacing customary land tenure. Chiefs were explicit about the need to slow the erosion of customary authority over land. One chief explained that he had introduced chiefs’ titles to prevent land from permanently leaving the customary domain.<sup>41</sup> Another described creating them as an alternative to state titles because:

We are not eager these days to recommend for title deeds. Because once title deeds are given, then what happens, the man now sells the land.<sup>42</sup>

To ensure that land with chiefs’ titles remains within customary tenure, some include statements that the document cannot be used as the chief’s consent to access a statutory title or for land sales.<sup>43</sup> Thus, the rights enshrined in these papers are circumscribed, which allows chiefs to preserve their power over land. As one chief described, a chief’s title ‘must’ indicate that ‘it is just traditional land. And they are obliged to fall under the chief and live in the conditions of the chief’.<sup>44</sup> As a result, these documents allow TLs to dampen demand for statutory land titles by responding to tenure security concerns, while also retaining their control over land.

### *Access*

Just as the designs of chiefs’ titles varied, the procedure for accessing them also differed across communities in the sample. Most commonly, residents reported approaching their headpersons to obtain a letter attesting to their land claims, which the chief and his council used as the foundation for a title. In some sampled communities, chiefs had demarcated land into customary plots and citizens could access chiefs’ titles to their land based on where they lived. In addition, newcomers to a chieftaincy may directly contact the chief to ask for land and a chief’s title, in which case chiefs seek the consent and input of headpersons to determine where land is available.

Interviews with TLs and citizens indicated that there was no consistent rule about membership or status within local institutions that determined who has access to a chief’s title. In some communities, newcomers reported seeking chiefs’ titles when they arrived, as ‘an indication that I was welcomed and given my own land by the headman and the chief’.<sup>45</sup> However, individuals with high status in their communities, including traditional councillors and headpersons, also possessed papers. Chiefs explained that titles are not exclusively for either new arrivals or village natives, but that they are for ‘all of them who have land where they live, and farm and they want some papers’.<sup>46</sup>

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<sup>40</sup> Interview, chief, Northern Province, 10 February 2014.

<sup>41</sup> Interview, chief, Southern Province, 29 October 2013.

<sup>42</sup> Interview, chief, Northern Province, 17 January 2014.

<sup>43</sup> Examples of this language include: ‘title deeds on this farm is not applicable unless the chief writes a consent with his own handwriting’ or ‘this farm should not be granted title deeds but it remains the property of the Chief.’

<sup>44</sup> Interview, chief, Northern Province, 10 February 2014.

<sup>45</sup> Interview, smallholder farmer focus group, Northern Province, 10 February 2014.

<sup>46</sup> Interview, chief, Northern Province, 29 January 2014.

The discretion of the TL was the most consistent determinant of who could access a chief's title. One traditional councillor reported that the chief will refuse to provide papers 'when he sees that that man is always quarrelling with other people or insulting people',<sup>47</sup> indicating that the chief's interpretations of the norms of appropriate behaviour in the community impact who accesses title. Another TL described his process of evaluating applications for land papers based on the individual's intentions for the land: 'It depends on the explanation, how they will convince me. If I'm convinced, yes. I will give a letter'.<sup>48</sup> Traditional leaders have discretion over who can obtain their land papers, how much they cost, and—ultimately—whether they are enforced.

The costs of chiefs' titles vary within and across communities. Within the qualitative sample, reported costs ranged from free to 500 Kwacha (81 US\$ in 2014). Some land documents included the price paid. Maps were often more expensive than letters or certificates. One traditional councillor described a cost of 250 Kwacha (\$40) and lunch for the councillors who demarcate the land, plus an additional 50 Kwacha (\$8) for the document.<sup>49</sup> Notably, even a document that is 'free' to access may still require payments in the form of tribute; for example, 'it doesn't cost anything. It is only the appreciation, he can only bring the appreciation to the chief'.<sup>50</sup> In some areas, multiple community members described standardized costs and procedures to access a chief's title. Yet in others, it was clear that their prices vary according to the applicant's relationship with the chief. For example, traditional councillors reported that they faced lower costs to obtaining a document than other community members. Summing up the sliding scale of costs for chiefs' titles, one councillor explained that: 'They don't charge but depends on the person. He can give anything he has'.<sup>51</sup>

Overall, these material costs compare favorably to the costs of a state title, which vary based on surveying fees, the location of the land, and its size. For example, Taylor Brown estimated that the minimum initial cost of a title application and surveying the land was \$100 in 2005. Further, converting an initial 14-year permit to a 99-year lease requires additional boundary demarcation fees.<sup>52</sup> Once titled, the land incurs ground rents. For a 2 ha agricultural smallholding in 2019, the minimum rate was \$32 (417 Kwacha) per year. By contrast, individuals with chiefs' titles are free of state land taxes, but may be expected to make contributions to annual traditional ceremonies or provide other forms of tribute to chiefs, just as customary landowners with unwritten rights might be. Further, only state titles can be used for credit within financial institutions, an additional factor shaping the costs and benefits of the two types of land documents.

The survey reveals patterns in the adoption of written property rights. Among households in customary land zones, 8.7 percent of landowning respondents had documents issued by a TL and 4.8 percent had documents issued by the state. Living within ten kilometres of a district capital, a proxy for higher population densities and land values, significantly increases the likelihood that individuals possess chiefs' titles. This is consistent with the classic theory that increased tenure

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<sup>47</sup> Interview, traditional councillor, Northern Province, 10 January 2014.

<sup>48</sup> Interview, chief, Northern Province, 4 February 2014.

<sup>49</sup> Interview, traditional councillor, Northern Province, 29 January 2014.

<sup>50</sup> Interview, traditional councillor, Northern Province, 10 January 2014.

<sup>51</sup> Interview, traditional councillor, Northern Province, 6 February 2014.

<sup>52</sup> Taylor Brown, 'Contestation, confusion, and corruption: Market-based land reform in Zambia', in Sandra Evers, Marja Spierenburg, and Harry Wels (eds), *Competing jurisdictions: Settling land claims in Africa* (Brill, Leiden, 2005), pp. 79-102, p. 90.

insecurity as a result of population growth induces institutional changes in property rights, yet it challenges the assumption that they become state titles.<sup>53</sup> Further, earning a cash income and accessing land via allocation from a TL or by purchase also significantly increased the likelihood that an individual has a chief's title, in analyses that consider a range of potential determinants of titling related to modes of land access, status or membership in customary institutions, wealth, and education. The coefficient estimates from logistic regression models with 95 percent confidence intervals, clustered at the community level, are presented in *Figure 1*. The coefficient plots on the left and right examine the determinants of chiefs' titles and state titles in customary land zones in Zambia, respectively. The attributes with confidence intervals that do not cross the dashed zero line significantly increase or decrease the likelihood a respondent had a title. Summary statistics are presented in *Appendix Table 1* and full regression models are

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<sup>53</sup> Boserup, *The condition of agricultural growth*.

Appendix Table 2.<sup>54</sup>

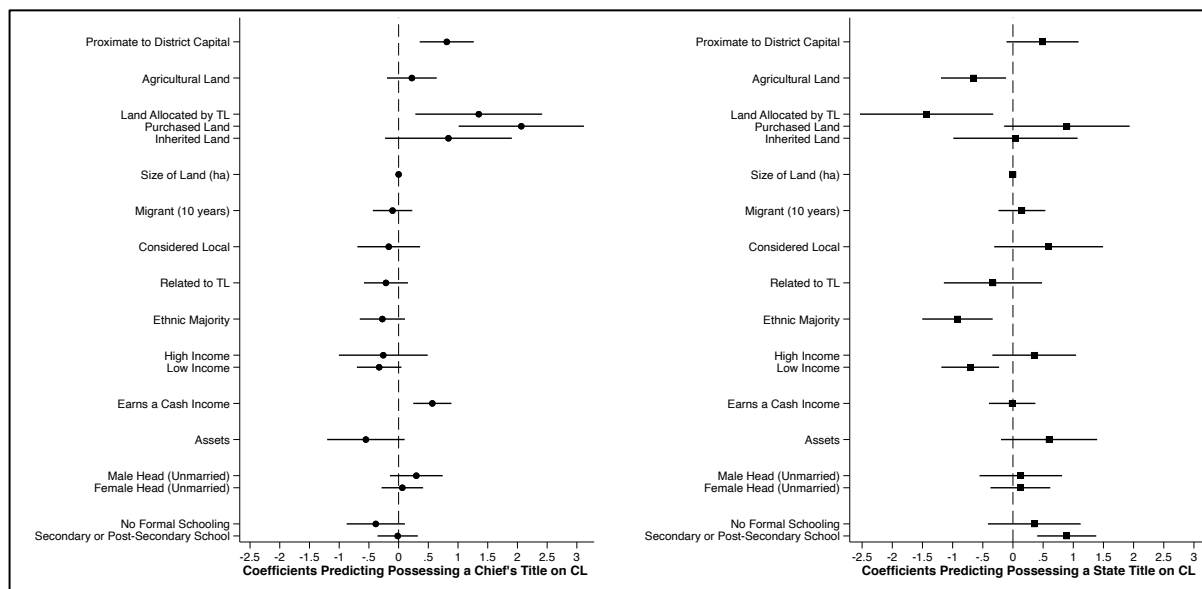


Figure 1: Factors that increase the likelihood of possessing a chief's title and state title in customary land zones

Notes: Points represent coefficients of effects; horizontal lines represent 95 percent confidence intervals. Controls for size of land, Lusaka, age of respondent are omitted. Reference category for income is middle; for gender/marital status of household head is married; for education is primary school.

The comparison reveals two key points of similarity. First, wealth impacts access to both types of titles. Low-income households<sup>55</sup> are significantly less likely to have a state title and cash income predicts access to chiefs' titles. This reflects the material costs of both types of documents, which impact their accessibility. Second, purchasing land predicts both types of titles (at a 90 percent confidence level for state title). Land sales signal financial resources and are an opportunity to create written land claims. Further, unwritten claims to newly acquired land may be weaker within customary tenure than long-standing rights, which could increase demand for documents. However, although purchasing land predicts the likelihood of possessing a title, many land users with inherited rights also have documents: 38 percent of respondents with chiefs' titles and 38 percent with state titles inherited their land.<sup>56</sup>

The comparison also reveals key differences in who adopts chiefs' titles and state titles. First, while measures of membership and status within the community do not impact chief's title in this dataset, they have a significant effect on the likelihood of state title. Unlike the documents in described earlier in West Africa, migrants are not more likely to have chiefs' titles. The survey also includes a proxy of indigeneity, whether a respondent reported being 'considered local'. This measure also has no consistent effect on the likelihood of chief's title, nor does being related to

<sup>54</sup> Appendix Table 2 also includes models with TL in the community as the measure of customary land and chiefdom fixed effects as alternative specifications. All of the significant predictors of titles from the main model are replicated in the alternative specifications; assets gains significance in the chiefdom FE model.

<sup>55</sup> This is based on a self-reported measure of whether the household's income meets their needs.

<sup>56</sup> By comparison, 59 percent of those with unwritten rights inherited their land.

the TL or being a member of the majority ethnic group in the community. However, membership in the majority ethnicity significantly decreases the likelihood that a respondent has a state title. This is consistent with the argument that individuals with higher status in customary institutions have lower demand for state property rights.<sup>57</sup> Notably, this ethnicity effect on state titling remains even among a sub-sample of only individuals born in the community.<sup>58</sup>

Second, individuals with chiefs' titles access and use their land differently than those with state titles. Receiving land from a TL increases the likelihood of possessing a chief's title, but decreases the likelihood of a state title. Further, non-agricultural land use only predicts state title: state titles are more widely used for residences than chiefs' titles are. Finally, secondary education predicts possession of a state title but not chief's title, suggesting that chiefs' titles may be more accessible to individuals with lower education.

This comparison indicates that chiefs' titles fill a gap in the property rights regime in Zambia, particularly for agricultural land users in areas with higher population densities. They are used by newcomers and village natives alike, with 94 percent of respondents possessing chiefs' titles reporting that they are considered local. Yet whether they are accessible (and for whom) remains at the discretion of chiefs who supply them.

#### *Enforcement and tenure security*

The proliferation of chiefs' titles also reflects citizens' demand for these property rights innovations, which is shaped by their evaluations of whether they improve upon the status quo. Respondents described two mechanisms linking chiefs' titles to increased tenure security. First, they explained that these documents can increase the likelihood that TLs protect their rights by boosting the traditional leaders' capacity to provide security or constraining them from expropriating land for financial gain. For example, citizens described the importance of acquiring a chief's title as: without them, 'when someone with money comes, he will be given your land'<sup>59</sup> and 'someone will come and claim that land and will chase you out of it'.<sup>60</sup> Similarly, TLs explained that written customary rights make it easier for them to protect residents' land claims, and punish those who threaten them.<sup>61</sup> Consistent with this mechanism, Lozi traditional councillors reported to Niraj Jain et al. that they favour individuals with chiefs' titles in land dispute cases.<sup>62</sup>

In addition, respondents described a boundary mechanism, in which delineated boundaries prevent 'quarrels' among neighbours and reduce the threat of encroachments within the community. The documents provide a source of evidence that citizens can use to adjudicate land claims among themselves without escalating the issue to a chief or traditional council. This mechanism linking papers to increased security would not require the document to directly impact

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<sup>57</sup> Matthew Collin, 'Tribe or title? The effect of coethnic neighbors on the demand for formal property rights in a Tanzanian slum', *Economic Development and Cultural Change* 68, 3 (2020), pp. 899–945; Honig, 'Land Politics.'

<sup>58</sup> This finding is also robust to alternative specifications of only agricultural land users, customary land zones measured as TLs in the community, and chiefdom fixed effects. Ethnicity, migrant status, local identity, and being related to a TL do not impact the likelihood of possessing a chief's title in any specification.

<sup>59</sup> Interview, smallholder farmer focus group, Northern Province, 17 February 2014.

<sup>60</sup> Interview, smallholder farmer focus group, Northern Province, 10 February 2014.

<sup>61</sup> Interview, traditional councillor, Northern Province, 10 January 2014.

<sup>62</sup> Niraj Jain et al., 'Perceptions of customary land tenure security in Western Province of Zambia', *International Journal of Social Science Studies* 4 (2016), p. 78.

enforcement by TIs. As one farmer explained, a chief's title is 'necessary because everyone should now know the land they have and their boundary'.<sup>63</sup> In another chiefdom, a traditional councillor reported that he had sought out a chief's title because 'it is a sign that this is my area and it defines my boundary'.<sup>64</sup> Consequently, chiefs' titles may impact tenure security by providing tangible foundations for citizens to advocate for their land rights among neighbours and in multiple community forums.

Yet, challenges to the security generated by chiefs' titles in Zambia remain. First, they are outside of the state's jurisdiction and, therefore, not legally-enforceable. As one government-employed lawyer explained: 'there is no law that will recognize these... [they are] just an administrative convenience within the chiefdoms'.<sup>65</sup> Citizens possessing chiefs' titles cannot rely on the state's juridical and legal institutions to enforce the rights enshrined in the document.

Second, and relatedly, as the inventions of chiefs, these informal property rights documents are also directly under the chief's jurisdiction. The chief is the authority guaranteeing the property right and can revoke these rights as he or she desires. Chiefs can decide that a different farmer, the government, or even a multi-national corporation would better use a plot of customary land than its current users. 'Development opportunities' for the community or the nation are frequent justifications for ignoring existing customary land claims. A chief can rely on that logic to expropriate land, even if the land user possesses a chief's title. As one headman described of the chiefs' titles in his domain, 'because it is not on [statutory] title, at any time the chief repossesses the land'.<sup>66</sup>

Third, even if the chief who issued a chief's title honours it, there is no guarantee that the next chief will do the same. Chiefs' titles vary in the degree to which they are institutionalized. One chief's innovations may not be respected after his or her death. Further, there are financial incentives for chiefs to create a new system of chiefs' titles upon taking office. Delegitimizing previous chiefs' titles and asking citizens to re-apply for new ones is an opportunity to collect tribute. Some customary institutions may standardize chiefs' titles such that they have continuity amid succession between chiefs, yet in other institutions these decisions are determined by unconstrained chiefs.

Fourth, in addition to the problems created by succession, chiefs' titles may overlap within a territory. Chiefs, headpersons, and their councils all issue chiefs' titles, yet they do not always work in unison. In particular, headpersons have been known to create titles without their superior chiefs knowing. For example, one chief described his shock when he saw a land document that had been issued in his chiefdom. He recalled being impressed by the headman's creativity, comparing the document to the look of a university degree certificate.<sup>67</sup> He then explained how other headpersons in his domain charge individuals for chiefs' titles, and then remand a small share of the revenue to the chief. Although headpersons are under the chief's authority within the customary hierarchy, their ability to govern land rights can be stronger than that of a more distant

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<sup>63</sup> Interview, smallholder farmer focus group, Northern Province, 23 January 2014.

<sup>64</sup> Interview, traditional councillor, Northern Province, 23 January 2014.

<sup>65</sup> Interview, lawyer, Lusaka Province, 13 March 2014.

<sup>66</sup> Interview, headman, Northern Province, 17 February 2014.

<sup>67</sup> Interview, chief, Northern Province, 17 January 2014.

chief. The potential for competing jurisdictions among TLs can lead to enforcement challenges and uncertainty for citizens with chiefs' titles.

These four issues are reflected in the experiences of citizens living on customary land. A citizen may acquire a chief's title and later be informed that it is not legitimate. In one chiefdom, focus group participants described how in the past there were 'false papers' given by the chief's assistants (*kapasos*) and 'bogus headmen'. Because they were issued without the knowledge of the chief, the respondents described them as being worthless. In contrast, they reported that 'the ones they give now are good' since they come directly from the chief.<sup>68</sup> The lack of standard processes for acquiring chiefs' titles can thus create opportunities to delegitimize or falsify the land rights they claim to protect.

Similarly, citizens who do not trust their chiefs have lower trust in their land papers. In one chiefdom where the chief had recently ceded large areas of land to investors, citizens explained that chiefs' titles were available, but that 'we have no security at all when it comes to land because you can lose it anytime, *even if you have that paper*' (emphasis added). In the same chiefdom, another decried the lack of statutory enforceability, saying: 'It can't go anywhere at all, it is a useless paper'. Finally, they expressed hope that the documents could become 'important' if a better chief comes to power in the future.<sup>69</sup>

Overall, these interviews revealed that citizens perceive obtaining a chief's title as one strategy to protect their land claims, but that the anticipated efficacy of these documents is not universal nor without challenges. While many landowners described chiefs' titles as a welcome innovation, others expressed scepticism that the documents provided any added value. In addition to concerns that papers issued by their current chiefs would not protect them from land expropriations sanctioned by these same authorities, some respondents reported that written customary rights were unnecessary because their unwritten rights were highly secure. They anticipated few gains from spending time and money seeking land papers. For example, one smallholder farmer reported that 'the reason why I haven't applied yet is because I knew that there was no need...for it is our land'.<sup>70</sup> A chief made a similar observation when he described resistance to his attempts to allocate chiefs' titles as: 'Why should you write this for me? I'm already here'.<sup>71</sup> Everyone recognized that chiefs' titles did not change the existing power structures, but merely provided a written acknowledgement of a land claim from a TL. Nevertheless, the following section provides evidence that these papers have a strong overall impact on citizens' confidence in the security of their property rights.

### *Evaluating the effects of chiefs' titles on tenure security*

Land expropriations, often described as being 'chased' from one's land, were the repeated tenure security concern in interviews with chiefs and farmers alike. Citizens that fear land expropriations have different investment incentives than those who believe their land rights to be secure; such *perceptions* are a key dimension of tenure security and a foundation for actual decision-making. To measure these tenure security perceptions, the LGPI survey asked: 'are you

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<sup>68</sup> *Ibid.*

<sup>69</sup> Interview, smallholder farmer focus group, Northern Province, 29 January 2014.

<sup>70</sup> Interview, smallholder farmer focus group, Northern Province, 10 February 2014.

<sup>71</sup> Interview, chief, Northern Province, 10 February 2014.

worried that your land would be taken away from you?'. In both the Lusaka and border samples, 13 percent living in customary land zones reported that they felt insecure.

Possessing a chief's title has a strong impact on perceptions of tenure security, across a variety of model specifications. The primary model of this relationship compares those with unwritten rights to those with chiefs' titles, excluding respondents with state titles (N=2781). It includes all of the variables in the earlier analyses predicting adoption of titles. These control variables are important because they help separate the impact of a chief's title from other attributes that affect tenure security. They also account for the observed determinants of access, such as proximity to a district capital and cash incomes (Model 1, *Appendix Table 3*).

The results indicate that a chief's title decreases the probability that a respondent reported tenure insecurity by 8.8 percentage points (pp), from a 14.8 percent predicted probability that households without titles feel insecure. For comparison, this effect size is larger than that of the two other variables which consistently impact perceived tenure security: inheriting land, which decreases insecurity by 6.4 pp, and identifying as low-income, which increases reported insecurity by 6.6 pp. Similarly, in sub-sample analyses of only inherited landowners, and only low-income respondents, possessing a chief's title significantly increases tenure security. This is also the case among other sub-samples of interest, such as only the relatives of TLs, only respondents proximate to district capitals, and only households without cash incomes. Even within groups predicted to have more secure and less secure customary land rights, or lower access to titles, land papers have a significant effect. Chiefs' titles also significantly decrease perceived insecurity in the alternative specification of customary land zones, communities in which respondents reported the presence of TLs (Model 2, *Appendix Table 3*).

### *Evaluating potential mechanisms*

Possessing one of the many variations of informal land papers allocated by TLs in Zambia increases respondents' confidence in their land rights. The qualitative evidence suggested two individual-level mechanisms which may connect chiefs' titles to perceptions of tenure security. First, TLs may be more likely to protect the land rights of individuals within the community who possess chiefs' titles. A chief's enforcement of customary rights might be more constrained, less arbitrary, and/or more informed if the individual has land papers. Second, interview respondents described a boundary mechanism, in which land disputes and threats among neighbours decrease as a result of the documented and delineated boundaries.

However, the mechanisms connecting chiefs' titles to increased tenure security may not be at the individual level: it may be that the chiefs who create and distribute documents are more concerned with providing tenure security for residents in their chiefdoms. In this case, possessing a chief's title may be a signal of a security-promoting chief, such that the mechanism driving these results is the type of chief and not whether the individual has a land paper. Similarly, there could be other unobserved factors at the chiefdom-level that are correlated with allocating chiefs' titles. For example, chiefs who are more concerned with the loss of control over customary land may be less likely to agree to large-scale land deals that displace smallholder farmers and more



likely to invent titles to reduce demand for state titling. Thus, there are multiple potential chiefdom-level mechanisms connecting chiefs' titles to security.<sup>72</sup>

In addition, it may be that chiefs' titles only increase tenure security for certain types of residents, such as the non-indigenous farmers described in the Côte d'Ivoire examples. Therefore, another potential mechanism connecting chief's titles to tenure security may be that it evens the playing field for residents with unwritten rights who are particularly vulnerable, but it does not have security-enhancing impacts more generally. The survey allows us disentangle some of these potential mechanisms.

The results suggest, first, that there is an individual-level effect within any given chiefdom. Adding chiefdom fixed effects, based on the geolocated survey data and georeferenced chiefdom maps, shows that chiefs' titles increase tenure security among members of the same customary institutions (*Appendix Table 3*, Model 3). The model predicts an effect of 8.0 pp on perceived security. Further, these effects are robust in analyses that exclude chiefdoms without any chiefs' titles, increasing confidence that the impacts of these documents are not the result of systematic differences between chiefs who do and do not give out titles. A few other analytical methods highlight the importance of individual-level effects within the same chiefdoms; an extremely low intra-chiefdom correlation (.11) reflects the dissimilarity in tenure security among respondents within the same chiefdoms. In addition, adding a measure of the proportion of the chiefdom with chiefs' titles neither impacts the title effect nor does it predict tenure security (*Appendix Table 3*, Model 4). Whether an individual has a chief's title is more important for tenure security than whether she has the type of chief who gives out few or many chiefs' titles. This provides evidence that individual-level mechanisms link chiefs' titles to security.

Statistical analyses also suggest that chiefs' titles have a more general impact on tenure security, as opposed to only being a resource for certain (observable) groups within this sample. Models with interaction effects do not provide any indication that chiefs' titles have a stronger or a weaker impact on the tenure security of migrants, those with inherited land, female headed households, ethnic minorities, or any of the other individual attributes in the model. There is some evidence that chiefs' titles have a stronger effect on tenure insecurity among respondents in proximity to the district capital (at a 90 percent confidence level, *Appendix Table 3*, Model 5). However, beyond geographic location, there is no discernible pattern in which types of community members benefit most. Instead, these results indicate that the security-increasing effects of possessing written evidence of one's rights are similar among respondents in this sample.

Further, there is no evidence that a chief's title changes who respondents identify as a threat to their security. In the survey, those who did express insecurity were then asked who is most likely to take their land. In customary land zones, respondents feared TLs (40 percent) and the government (38 percent), followed by family members (13 percent), and private actors (8 percent). The responses for individuals with unwritten and written customary property rights were not statistically different. In part, this is the result of the very small number of respondents with chiefs' titles who reported tenure insecurity and answered this question (N=18). However,

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<sup>72</sup> I appreciate an anonymous reviewer for suggesting further attention to chiefdom-level mechanisms.

there are also theoretical reasons to anticipate that the shift between written and unwritten customary rights, produced and enforced by the same authorities, would not change threat perceptions. These results highlight that chiefs' titles do not fundamentally transform how citizens protect their land claims; instead, they provide tangible evidence that can be used as leverage against TLs and among neighbours in community forums within customary land institutions.

### *Comparing chiefs' titles and state titles*

Finally, how do the security-increasing effects of chiefs' titles compare to state titles? Nicholas Sitko, Jordan Chamberlin, and Munguzwe Hichaambwa's 2014 study of state titling concluded that titling was not having the anticipated effects on agricultural investments theorized to occur by way of increased tenure security.<sup>73</sup> Consistent with their findings, the LDPI survey results revealed that in customary land zones, state titles had no impact on tenure security (*Appendix Table 3, Model 6*). The 5 percent of respondents with state titles were not more or less likely to report insecurity (N=168). This does not mean that state titles never dampen perceived insecurity for individuals in Zambia, however. Instead, for the 39 percent of respondents on zones of historic state land with state titles (N=709), possessing a title significantly decreased insecurity (*Appendix Table 3, Model 7*). Whereas the likelihood of reporting insecurity is 17 percent among landowners without title on state land; it falls to 6 percent among those with state titles.<sup>74</sup>

*Figure 2* plots the effect of chiefs' titles (left) in parallel to state titles (center) within the same model, in customary land zones (*Appendix Table 3, Model 6*). It also visualizes the impact of state title on historic state land (right), for comparison (*Appendix Table 3, Model 7*). The large confidence interval for the effect of state titles in customary areas indicates that the perceptions of tenure security for respondents with and without state titles were not significantly different in these zones. This contrasts with respondents who possess chiefs' titles, who were consistently less likely to report insecurity. However, on historic state land (right), there is a clear effect: individuals without documents feel significantly less secure than those with titles. Where and when state titles increase tenure security depends heavily on local context.

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<sup>73</sup> Nicholas J. Sitko, Jordan Chamberlin, and Munguzwe Hichaambwa, 'Does smallholder land titling facilitate agricultural growth?: An analysis of the determinants and effects of smallholder land titling in Zambia', *World Development* 64 (2014), pp. 791-802.

<sup>74</sup> In the alternative specification of customary land zones, where respondents reported there was a TL in the community, both chief's title and state titles have a significant negative impact on insecurity (Table 3 Models 8).

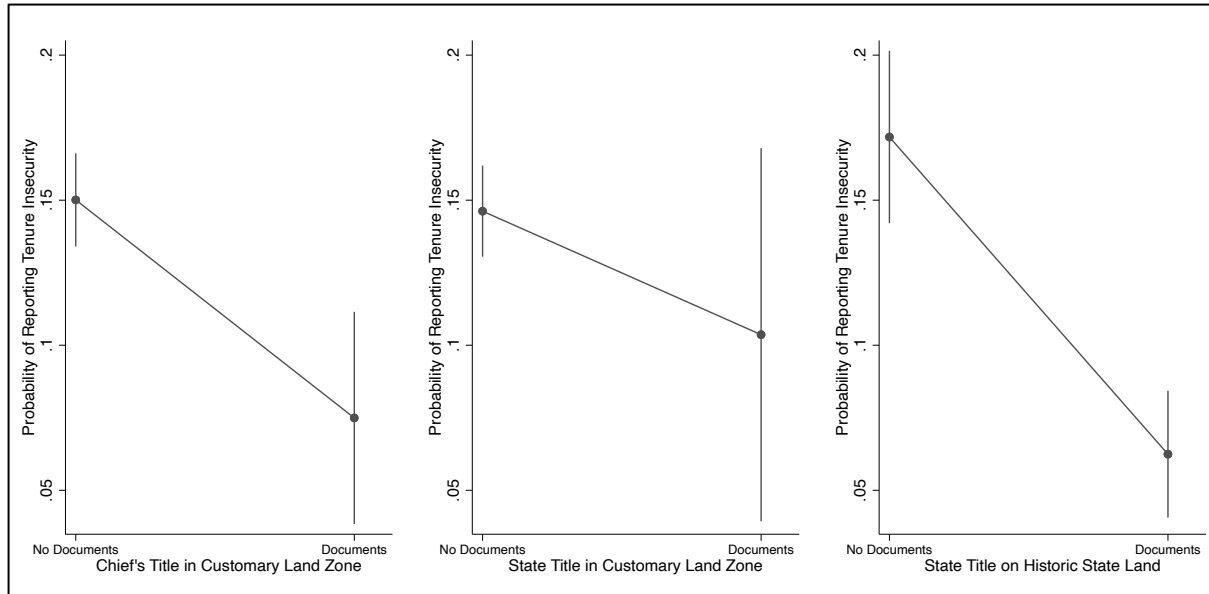


Figure 2: The Effect of chief's title and state title on tenure security

Notes: Points represent predicted probabilities based on models with the full set of control variables; vertical lines represent 95 percent confidence intervals.

### Discussion and conclusions

These analyses indicate that written property rights make people feel more secure, even within the same authority structures that govern unwritten property rights on customary land. As the qualitative interviews show, this paradox of chiefs' titles is evident to citizens: chiefs who provide biased or extractive enforcement of unwritten rights can do the same for written rights. Nevertheless, the overall effect of chiefs' titles on respondents' tenure security is strong. While future research should continue to examine potential unobserved factors that impact who has chiefs' titles, these analyses suggest that possessing a chief's title itself is driving the security effect, not living in the type of community where chiefs allocate titles or having a certain demographic profile. Interaction effects and sub-sample analyses provide further evidence that possessing a chief's title is consistently associated with security, even within groups with lower access to titles or higher customary tenure security.

These findings update the classic models of property rights by examining how land rights within customary institutions change. Consistent with the expectations of the "evolutionary theory of land rights",<sup>75</sup> these property rights innovations are more common in proximity to district capitals, a proxy for population density and land desirability. Yet the changes examined here are not an evolution from "traditional" to "modern" property rights, but to new forms of customary rights. Further, the comparison of how citizens with chiefs' titles and state titles rated their tenure security in zones of customary or state land sheds light on the desirability of different types of land rights. These findings suggest that chiefs' titles may not only be more accessible in rural areas, but they may also be preferable for some than state titles because TLs are present in each locality.

<sup>75</sup> Platteau, 'The evolutionary theory of land rights'.

This study has examined chiefs' titles as one type of informal property rights document that citizens use as an adaptation strategy, given dissatisfaction with existing land tenure options. Users recognize that they are extra-legal but nevertheless value them as evidence that they can draw upon to protect their land claims. This article has focused on papers generated by TLs, but Zambia land users also use statutory documents in a similar way. For example, some start the process of statutory titling but opt to indefinitely delay its completion and use the documents produced in the process as evidence to support their land rights. Some rely on offer letters from the Ministry of Lands, which document that the plot been allocated to an individual, but is not yet legally their property.<sup>76</sup> Completing the burdensome titling process results in state-recognized land rights—and tax responsibilities or other fees. Instead, many citizens draw on the documents created during an incomplete titling process as written evidence of land claims. In doing so, they use statutory papers—documents issued through official governmental processes—to support their land rights in ways unintended by the laws regulating land use.

For scholars and policy makers interested in tenure security, these results suggest a few key issues for future research. First, the qualitative findings discussed here have highlighted key areas of concern about the security of informal property rights documents, largely related to the accountability of individual chiefs. Second, while there is clear evidence that these papers shape perceptions of tenure security, equity concerns require attention to whose name is on the land rights document within the family lineage and marital household.<sup>77</sup> This is a fruitful avenue for future research and should be a central consideration in the design of the many experiments with land tenure certificates in Africa. Finally, this study has suggested a number of potential mechanisms connecting chiefs' titles to perceived tenure security, but much remains to be learned about how citizens use them, when they are most helpful, and for whom.

Ultimately, such innovations in property rights documents are a strategic response to a specific political and institutional environment. These findings reveal how a strong set of social intermediaries have retained their relevance and slowed the erosion of their own power by developing an alternative system of written property rights to state titles. In doing so, they have challenged the government's efforts to liberalize and formalize land tenure, a priority since the 1995 Land Act. This case thus displays the entrepreneurship of individual chiefs seeking to retain control over customary land, while also responding to citizen demand for stronger recognitions of their land rights. They are thus a product of the power struggle between chief and state. However, this study also demonstrates that written land rights documents are a resource for citizens, despite their flaws. By adopting chiefs' titles and reporting that they increase tenure security, respondents revealed that informal property rights documents can be a powerful tool in a citizens' arsenal.

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<sup>76</sup> Ephraim Kabunda Munshifwa, Wilson Ngoma, and Ikugile Makenja, 'Major determinant of physical development on urban residential land: The case of Kalulushi municipality in Zambia', *International Journal of Social Science Studies* 5, 6 (2017), p. 79.

<sup>77</sup> Daniel Ayalew Ali, Klaus Deininger, and Markus Goldstein, 'Environmental and gender impacts of land tenure regularization in Africa: Pilot evidence from Rwanda', *Journal of Development Economics* 110 (2014), pp. 262–75; Caron, 'Pursuing gender-transformative change'.

SUPPLEMENTAL MATERIALS FOR ONLINE APPENDIX

*Appendix Table 1*  
 Summary of Attributes of Respondents with Written and Unwritten Property Rights on Official Customary Land

	CHIEF'S TITLE	UNWRITTEN LAND RIGHT	STATE TITLE
<i>Percentage of Lusaka Sample</i>	13.3 percent	74.8 percent	10.3 percent
<i>Percentage of Border Sample</i>	7.9 percent	86.7 percent	4.0 percent
Allocated by TA	32 percent	30 percent	8 percent*
Purchased	28 percent	6 percent*	48 percent*
Inherited	38 percent	59 percent*	38 percent
Average Land Size	6.50 ha	5.66 ha	3.85 ha*
Agricultural Land	78 percent	87 percent*	56 percent*
Asset Index	.28	.27	.38*
High Income	7 percent	3 percent*	15 percent*
Middle Income	22 percent	14 percent*	30 percent*
Low Income	72 percent	83 percent*	55 percent*
Earns a Cash Income	36 percent	21 percent*	28 percent
Migrant (10 years)	32 percent	26 percent*	46 percent*
Considered Local	94 percent	94 percent	96 percent
Member of Ethnic Majority	49 percent	66 percent*	31 percent*
Related to TL	21 percent	34 percent*	14 percent*
Male Head (Unmarried)	12 percent	9 percent*	14 percent
Married	68 percent	70 percent	63 percent
Female Head (Unmarried)	20 percent	21 percent	23 percent
Average Age	39 years	39 years	37 years
No Formal Schooling	10 percent	16 percent*	9 percent
Primary School Only	54 percent	59 percent	31 percent*
Secondary or Post-Secondary School	36 percent	25 percent*	60 percent*
Within 10km of District Capital	32 percent	10 percent*	35 percent
N	298	2961	168

*Notes: Table reports the percentage of each group with each characteristic, in addition to the mean land size and age of respondents in each sample. Stars denote that in a two-sample t-test, the difference of means between the comparison group (unwritten or state title) and Chief's Title is significant at the p=.05 level. Sample is households in customary land zones.*

Appendix Table 2: Access to Titles Regression Models

<i>Sample</i>	Customary Land Zone		TLs in Community		Customary Land Zone With Chiefdom FE	
	Model 1 <i>Chief's Title</i>	Model 2 <i>State Title</i>	Model 3 <i>Chief's Title</i>	Model 4 <i>State Title</i>	Model 5 <i>Chief's Title</i>	Model 6 <i>State Title</i>
Allocated by TL	1.349* (0.544)	-1.431* (0.563)	1.288** (0.412)	-1.637** (0.400)	1.524** (0.531)	-1.555** (0.594)
Purchased	2.065** (0.538)	0.894+ (0.531)	2.006** (0.416)	0.606* (0.279)	2.211** (0.523)	0.255 (0.502)
Inherited	0.839 (0.544)	0.0415 (0.526)	0.663 (0.412)	0.227 (0.288)	0.769 (0.525)	-0.195 (0.538)
Size of Land (ha)	0.000 (0.001)	0.000 (0.001)	0.00121 (0.001)	0.001 (0.001)	0.001 (0.001)	0.021** (0.007)
Agricultural Land	0.223 (0.214)	-0.653* (0.275)	0.923** (0.211)	-0.864** (0.177)	0.082 (0.228)	-0.488 (0.341)
Assets	-0.551+ (0.332)	0.599 (0.407)	0.232 (0.244)	0.036 (0.242)	-0.780* (0.366)	0.300 (0.448)
High Income	-0.258 (0.381)	0.353 (0.354)	-0.002 (0.267)	0.264 (0.215)	-0.113 (0.406)	0.584 (0.376)
Low Income	-0.327+ (0.191)	-0.708** (0.244)	-0.202 (0.162)	-0.647** (0.136)	-0.228 (0.206)	-0.558+ (0.294)
Earns a Cash Income	0.568** (0.164)	-0.0133 (0.196)	0.519** (0.134)	-0.119 (0.137)	0.587** (0.169)	0.209 (0.246)
Migrant (10 years)	-0.102 (0.169)	0.148 (0.198)	-0.012 (0.137)	-0.280+ (0.146)	-0.230 (0.177)	0.193 (0.217)
Considered Local	-0.166 (0.269)	0.592 (0.460)	-0.177 (0.195)	0.423+ (0.233)	0.057 (0.305)	0.661 (0.454)
Member of Ethnic Majority	-0.273 (0.194)	-0.920** (0.298)	-0.095 (0.183)	-0.824** (0.244)	0.025 (0.197)	-1.034** (0.289)
Related to TA	-0.213 (0.188)	-0.331 (0.415)	-0.069 (0.156)	-0.691* (0.288)	-0.200 (0.220)	-0.256 (0.359)
Male Head (Unmarried)	0.298 (0.227)	0.130 (0.349)	0.143 (0.177)	0.366* (0.158)	0.264 (0.257)	0.050 (0.363)
Female Head (Unmarried)	0.0629 (0.178)	0.123 (0.253)	0.041 (0.132)	0.286* (0.133)	0.012 (0.194)	-0.038 (0.282)
Age	0.005 (0.005)	0.008 (0.007)	0.003 (0.004)	0.008* (0.004)	0.007 (0.005)	0.007 (0.008)
No Formal Schooling	-0.384 (0.250)	0.354 (0.392)	-0.354+ (0.204)	0.319 (0.235)	-0.376 (0.266)	0.179 (0.319)
Secondary or Post	-0.0153 (0.173)	0.891** (0.250)	-0.094 (0.137)	0.558** (0.142)	-0.005 (0.192)	0.826** (0.267)
Proximate to District Capital	0.811** (0.232)	0.490 (0.305)	0.867** (0.186)	-0.045 (0.204)	0.858* (0.380)	0.126 (0.475)
Lusaka	0.256 (0.251)	-0.223 (0.345)	-0.476+ (0.248)	0.661** (0.212)	-1.860** (0.602)	0.338 (1.492)
Customary Land Zone			0.149 (0.225)	-1.287** (0.255)		
Chiefdom FE	N	N	N	N	Y	Y
Constant	-3.466** (0.774)	-3.162** (0.875)	-4.352** (0.613)	-1.162** (0.431)	-0.979 (0.849)	-3.355** (1.147)
Observations	2,968	2,968	4,302	4,302	2,628	1,433

*Notes: Table presents logistic regression coefficients with robust standard errors clustered at the community in parentheses. Reference category for income is middle; for gender/marital status is married; for education is primary school. Customary Land Zone is areas within the official 1958 Chiefs' Maps where respondents reported TLs in the locality in 2019.*

**\*\*  $p < 0.01$ , \*  $p < 0.05$ , +  $p < 0.1$ .**

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Appendix Table 3: Tenure Security and Mechanisms Regression Models

<i>Sample</i>	<i>Customary Land Zone</i>	<i>TL in Community</i>	<i>Customary Land Zone</i>	<i>Customary Land Zone</i>	<i>Customary Land Zone</i>	<i>Customary Land Zone</i>	<i>Historic State Land</i>	<i>TL in Community</i>
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7	Model 8
Chief's Title	-1.024** (0.283)	-0.754** (0.230)	-0.868** (0.287)	-0.934** (0.293)	-0.579+ (0.302)	-0.819** (0.287)	-0.407 (0.357)	-0.682** (0.224)
State Title						-0.417 (0.380)	-1.174** (0.230)	-0.900** (0.206)
Allocated by TL	-0.264 (0.228)	-0.431* (0.207)	-0.281 (0.243)	-0.279 (0.243)	-0.274 (0.242)	-0.236 (0.242)	-0.613 (0.382)	-0.379+ (0.203)
Purchased	-0.192 (0.292)	-0.155 (0.226)	-0.314 (0.324)	-0.307 (0.325)	-0.293 (0.325)	-0.427 (0.319)	-0.598+ (0.312)	-0.309 (0.213)
Inherited	-0.546* (0.217)	-0.680** (0.193)	-0.469* (0.229)	-0.470* (0.229)	-0.471* (0.229)	-0.389+ (0.227)	-0.930** (0.339)	-0.605** (0.186)
Size of Land (ha)	0.002 (0.001)	0.00313+ (0.00185)	0.00283 (0.00200)	0.003 (0.002)	0.003 (0.002)	0.003 (0.002)	0.0054* (0.003)	0.003+ (0.002)
Agricultural Land	0.437* (0.218)	0.385* (0.171)	0.489+ (0.258)	0.478+ (0.258)	0.483+ (0.257)	0.587* (0.259)	0.273 (0.227)	0.397* (0.154)
Assets	-0.214 (0.255)	-0.328 (0.222)	-0.151 (0.269)	-0.133 (0.268)	-0.151 (0.269)	-0.145 (0.262)	-0.138 (0.303)	-0.175 (0.199)
High Income	0.269 (0.412)	0.302 (0.320)	0.396 (0.419)	0.413 (0.421)	0.396 (0.418)	0.140 (0.406)	0.445 (0.348)	0.209 (0.270)
Low Income	0.564** (0.210)	0.589** (0.172)	0.681** (0.224)	0.672** (0.224)	0.689** (0.225)	0.622** (0.207)	0.730** (0.226)	0.564** (0.151)
Earns a Cash Income	0.284* (0.136)	0.169 (0.114)	0.0644 (0.130)	0.067 (0.130)	0.067 (0.130)	0.079 (0.125)	-0.121 (0.179)	0.180+ (0.108)
Migrant (10 years)	-0.145 (0.138)	-0.241* (0.123)	-0.188 (0.140)	-0.187 (0.140)	-0.187 (0.140)	-0.193 (0.135)	-0.160 (0.194)	-0.191+ (0.111)
Considered Local	-0.278 (0.236)	-0.0985 (0.215)	-0.406 (0.249)	-0.407 (0.249)	-0.403 (0.247)	-0.408+ (0.243)	0.300 (0.361)	-0.173 (0.192)
Related to TA	0.123 (0.143)	0.115 (0.122)	0.0922 (0.143)	0.093 (0.144)	0.091 (0.143)	0.094 (0.139)	0.095 (0.206)	0.120 (0.118)
Member of Ethnic Majority	0.098 (0.165)	0.0789 (0.141)	0.0650 (0.167)	0.080 (0.167)	0.056 (0.167)	0.001 (0.159)	0.249 (0.239)	0.066 (0.135)
Male Head (Unmarried)	-0.032 (0.249)	-0.123 (0.205)	-0.0130 (0.258)	-0.011 (0.258)	-0.014 (0.258)	-0.010 (0.247)	-0.334 (0.279)	-0.150 (0.188)
Female Head (Unmarried)	0.341* (0.147)	0.112 (0.135)	0.300* (0.153)	0.317* (0.153)	0.304* (0.153)	0.272+ (0.149)	-0.306 (0.202)	0.098 (0.121)



Age	-0.005 (0.004)	-0.00486 (0.00309)	-0.00671+ (0.00379)	-0.007+ (0.004)	-0.007+ (0.004)	-0.006+ (0.004)	-0.002 (0.005)	-0.004 (0.003)
No Formal Schooling	-0.249 (0.180)	-0.189 (0.158)	-0.236 (0.187)	-0.233 (0.187)	-0.235 (0.187)	-0.243 (0.189)	0.043 (0.305)	-0.196 (0.155)
Secondary or Post	-0.073 (0.144)	-0.145 (0.125)	-0.0451 (0.143)	-0.038 (0.144)	-0.050 (0.144)	-0.022 (0.140)	-0.064 (0.186)	-0.070 (0.115)
Proximate to District Capital	-0.014 (0.210)	0.0515 (0.161)	0.511+ (0.293)	0.513+ (0.293)	0.621* (0.298)	0.400 (0.301)	0.308 (0.220)	0.103 (0.140)
Proximate * Chiefs Title					-1.310+ (0.761)			
Chiefs' Titles/Chiefdom				-3.545 (2.335)				
Customary Land Zone		-0.273 (0.167)						-0.217 (0.158)
Lusaka	0.348 (0.264)	0.481* (0.197)	0.578 (0.611)	-0.191 (0.485)	0.765 (0.605)	0.640 (0.618)	0.542* (0.239)	0.341+ (0.176)
Chiefdom FE	N	N	Y	Y	Y	Y	N	N
Constant	-1.914** (0.443)	-1.553** (0.402)	-2.959** (0.626)	-1.782* (0.728)	-3.054** (0.622)	-3.103** (0.620)	-2.015** (0.697)	-1.642** (0.385)
Observations	2,781	3,544	2,622	2,613	2,622	2,789	1,469	4,262

*Notes: Outcome is insecurity. Table presents logistic regression coefficients with robust standard errors clustered at the community in parentheses. Reference category for income is middle; for gender/marital status is married; for education is primary school. Models 1-5 exclude households with state titles (to compare landowners with written and unwritten customary rights). Customary Land Zone is areas within the official 1958 Chiefs' Maps where respondents reported TLs in the locality in 2019.*

*\*\*  $p < 0.01$ , \*  $p < 0.05$ , +  $p < 0.1$ .*